

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Advanced Respiratory, Inc.,

Civil No. 00-2646 (DWF/SRN)

Plaintiff,

v.

**ORDER FOR JUDGMENT**

Electromed, Inc.,

Defendant.

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Edward M. Laine, Esq., Cyrus A. Morton, Esq., and David J. McKinley, Esq., Oppenheimer Wolff & Donnelly, 3300 Plaza VII Building, 45 South Seventh Street, Minneapolis, MN 55402; Edward F. Fox, Esq., Bassford Lockhart Truesdell & Briggs, 3550 Multifoods Tower, 33 South Sixth Street, Minneapolis, MN 55402-3787, counsel for Plaintiff.

John B. Lunseth, II, Esq., Michael M. Lafeber, Esq., and Lori J. Marco, Esq., Briggs & Morgan, 2200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; Karl L. Cambronne, Esq., Chestnut & Cambronne, 3700 Campbell Mithun Tower, 222 South Ninth Street, Minneapolis, MN 55402; Richard O. Bartz, Esq., and Richard J. Bartz, Esq., 350 Southdale Office Center, 6750 France Avenue South, Edina, MN 55435; Paul A. Boches, Esq., McLean Group, 1025 Connecticut Avenue Northwest, Suite 1012, Washington, DC 20036, counsel for Defendant.

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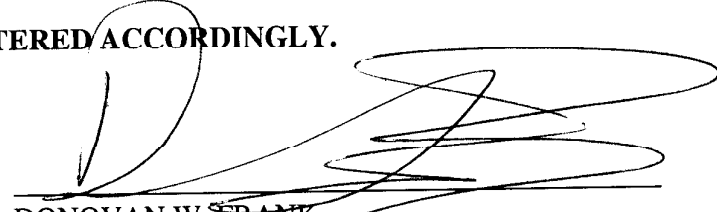
The above-entitled matter came on for trial before the undersigned and a jury on July 8, 9, 10, 14, 15, 16, 17, and 21, 2003. On July 22, 2003, the jury returned its verdict in the form of Special Verdict Form answers to the questions that were posed to it by the Court. The Special Verdict Form is attached as Appendix A.

Based upon all of the files, records, and proceedings herein, including the answers to the Special Verdict Form questions returned by the jury on July 22, 2003, subscribed by the foreperson thereof on July 22, 2003, it is ordered that Plaintiff's complaint against the Defendant in this case (Doc. No. 1) is **DISMISSED WITH PREJUDICE**.

JUL 23 2003  
FILED \_\_\_\_\_  
RICHARD D. SLETTEN, CLERK  
JUDGMENT ENTERED JUL 23 2003  
DEPUTY CLERK \_\_\_\_\_

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: July 23, 2003



DONOVAN W. FRANK  
Judge of United States District Court

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Advanced Respiratory, Inc.,

Civil No. 00-2646 (DWF/SRN)

Plaintiff,

v.

**SPECIAL VERDICT FORM**

Electromed, Inc.,

Defendant.

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**LITERAL INFRINGEMENT**

1. Did Advanced Respiratory prove by a preponderance of the evidence that Electromed's MedPulse device literally infringes Claim 1 of the '662 Patent?

\_\_\_\_\_ Yes

~~\_\_\_\_\_~~ \* No

*Only answer Question 2 if you answered "no" to Question 1.*     *TH*

**INFRINGEMENT UNDER THE DOCTRINE OF EQUIVALENTS**

2. Did Advanced Respiratory prove by a preponderance of the evidence that Electromed's MedPulse device infringes Claim 1 of the '662 Patent under the Doctrine of Equivalents?

\_\_\_\_\_ Yes

~~\_\_\_\_\_~~ \* No

*If you answered "yes" to Question 1 or Question 2, then you must answer Question 3 and Question 4. If you answered "no" to Question 1 AND answered "no" to Question 2, then you are done with your deliberation and you should sign the verdict form.*

**DAMAGES FROM INFRINGEMENT**

3. What amount of damages will fairly and adequately compensate Advanced Respiratory for infringement of the '662 Patent by Electromed's MedPulse Devices?

\$ \_\_\_\_\_ (in dollars)

*Answer Question 4 ONLY if you answered "yes" to Question 1 or Question 2. If you answered "no" to Question 1 AND answered "no" to Question 2, then you are done with your deliberation and you should sign the verdict form.*

**WILLFUL INFRINGEMENT**

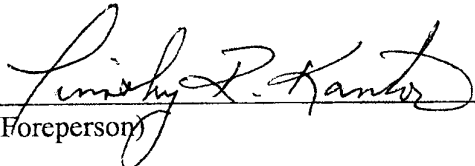
4. Has Advanced Respiratory proved by clear and convincing evidence that Electromed's infringement was willful?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

**Sign the special verdict form, and inform the court security officer that you have finished deliberating.**

Dated: July 22, 2003

  
(Foreperson)

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

**CIVIL NOTICE**

DATE MAILED TO COUNSEL/PRO SE PARTIES:

The purpose of this notice is to summarize the time limits for filing with the District Court Clerk's Office a Notice of Appeal to the Eighth Circuit Court of Appeals from a final decision of the District Court in a civil case.

***This is a summary only. For specific information on the time limits for filing a Notice of Appeal, review the applicable federal civil and appellate procedure rules and statutes.***

Rule 4(a) of the Federal Rules of Appellate Procedure (Fed. R. App. P.) requires that a Notice of Appeal be filed within:

1. Thirty days (60 days if the United States is a party) after the date of "entry of the judgment or order appealed from;" or
2. Thirty days (60 days if the United States is a party) after the date of entry of an order denying a timely motion for a new trial under Fed. R. Civ. P. 59; or
3. Thirty days (60 days if the United States is a party) after the date of entry of an order granting or denying a timely motion for judgment under Fed. R. Civ. P. 50(b), to amend or make Additional findings of fact under Fed. R. Civ. P. 52(b), and/or to alter or amend the judgment under Fed. R. Civ. P. 59; or
4. Fourteen days after the date on which a previously timely Notice of Appeal was filed.

If a Notice of Appeal is not timely filed, a party in a civil case can move the District Court pursuant to Fed. R. App. P. 4(a)(5) to extend the time for filing a Notice of Appeal. This motion must be filed no later than 30 days after the period for filing a Notice of Appeal expires. If the motion is filed after the period for filing a Notice of Appeal expires, the party bringing the motion must give the opposing parties notice of it. The District Court may grant the motion, but only if excusable neglect or good cause is shown for failing to file a timely Notice of Appeal.

## **United States Court of Appeals FOR THE EIGHTH CIRCUIT**

### **Prehearing Conference Program**

The United States Court of Appeals for the Eighth Circuit has established an early intervention Prehearing Conference Program. The purpose of the program is twofold: (1) to facilitate settlement discussions in civil cases by providing an impartial atmosphere for an open discussion of the case and alternative methods of disposition and (2) to promote the delineation of issues, early resolution of procedural problems, and effective administration of an appeal throughout the appellate process. See 8<sup>th</sup> Cir. R. 33A.

The program is directed by Mr. John Martin. Mr. Martin screens newly filed appeals based on information furnished by both appellants and appellees in the court's Appeal Information Forms A and B. Contact with counsel is by telephone and in personal conferences held in several cities throughout the Circuit. All communications with Mr. Martin are confidential. Counsel can openly discuss and evaluate the issues and explore alternatives in a non-adversarial setting without fear that the subsequent processing of the appeal or ultimate disposition of the case will be adversely affected by participation in the program.

Participation in the program is voluntary. However, the Court strongly encourages your participation and cooperation. Over the past twenty years, the program has enabled many appellate litigants to achieve mutually satisfactory resolution of certain issues or an overall settlement prior to progressing through all stages of the appellate process. Issue delineation enables counsel to focus only on those issues that need judicial resolution. The program has helped relieve the ever-increasing caseload confronting the Court, and it has also saved litigants and attorneys substantial amounts of time and money.

In order for the program to function effectively certain information must be provided at the initiation of the appeal. *Eighth Circuit Rule 3B directs each civil appellant to: (1) file a completed Appeal Information Form A with the Notice of Appeal at the time the Notice is filed with the District Court clerk and (2) forward a copy of the completed Form A and a copy of Appeal Information Form B to the appellee for completion.* Appellee may complete Form B and send it to the clerk of the Court of Appeals. If you have any questions about the Prehearing Conference Program or the Appeal Information Forms, please contact Mr. Martin at (314)-539-3669.

Forms A and B are available from the District Court clerk and the Court of Appeals clerk and can be found at the Court of Appeals' web site at: [www.ca8.uscourts.gov](http://www.ca8.uscourts.gov)